

Front-Loading Due Process: A Dignity-Based Approach to School Discipline

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Most observers agree that, before we end affirmative action programs in higher education, we must dramatically improve the public elementary and high schools that most minority students attend. Usually we think of educational reform in terms of resources and curriculum, but a new fairness-oriented approach to discipline also plays an important role.

Part I of the Article points out the irrationality and cruelty of the conventional approach to school discipline in our schools. One author describes her experience dealing with discipline as a member of her local school board. The harsh discipline practices throughout the U.S., as well as the negative impact of suspensions and expulsions, are discussed.

Part II presents an alternative approach to school discipline based on due process principles. The authors argue that these principles of notice, equality, participation, proportionality, and rationality should be seen not as the enemy of effective school policies, but as an important resource to be used voluntarily by school districts in designing policies to improve educational performance. The Article shows how these principles can be helpful in developing school-wide and classroom strategies aimed at preventing school violations, as well as in creating alternatives to out-of-school suspension and expulsion in cases of serious infractions.

If America is going to be able to abandon affirmative action in twenty-five years, we must have a wholesale reform of the American education system so that talent and perseverance, rather than family income and race, determine success in achieving entry into our elite universities. We believe that an effective disciplinary process is a small but essential part of this reform, because the cruel but clear truth is that large numbers of poor minority students are expelled from or encouraged to leave school before they have been able to reach their true academic potential.

We suggest a new approach to school discipline based on the constitutional value of human dignity.¹ Dignity upholds the intrinsic worth of

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¹ We would like to express our gratitude to Rhonda Magee (formerly Rhonda Magee Andrews) who has pointed out the importance of "dignity" as a constitutional value. See Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race*

every individual; each of us deserves respect as the subject acting out our life story, not merely as an object to be acted upon by others. This commitment to the dignity of all citizens is reflected in the Declaration of Independence's proposition that all men are created equal and are endowed with certain unalienable rights including life, liberty, and the pursuit of happiness. At a more concrete level, this commitment to dignity is enshrined both in constitutional and statutory law by rights that protect both substance and procedure. Students, as citizens, have a right to an education as well as to fair and respectful treatment while obtaining it.² The two rights reinforce each other. Fair treatment improves educational performance, and academically successful students have fewer disciplinary problems.

We believe that the Supreme Court's opinions on procedural due process can be an important tool in fashioning a disciplinary process based on respect and fairness. We realize that the Supreme Court has done little to protect student due process rights,³ but we believe that we must go beyond the Court's holdings to examine its larger theory of due process. We believe that these opinions can be read as more than rulings on the issue of whether or not a hearing should be tacked on to the end of the disciplinary process; instead, these opinions give us the principles of a philosophy of school governance that should permeate the entire school environment. Seen from this perspective, due process is not just a hammer used by courts to coerce school districts, but a series of principles that school districts should freely choose to adopt in achieving their goal of providing every child in their charge a first-rate education.

Part I of the Article will attempt to sketch out the irrationality and cruelty of the conventional approach to school discipline in our schools. Part II will

Consciousness and Colorblindness in Post-Slavery America, 54 ALA. L. REV. 483, 487 (2003).

² The "right to an education" is a right in all states under statutory law. See, e.g., OHIO REV. CODE ANN. § 3313.64 (West 2005). It is also a right under most state constitutions. See, e.g., *Sheff v. O'Neill*, 678 A.2d 1267, 1279 (Conn. 1996). While the U.S. Supreme Court rejected the proposition that education is a fundamental right under the Fourteenth Amendment's Equal Protection Clause in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 54 n.110 (1973), Justice Powell pointed out that that case involved an unequally funded education and that the result might be different if a student was "absolutely precluded from receiving an education." *Id.* at 60 n.4. Expulsion constitutes such a total deprivation. The U.S. Supreme Court has held that suspending a student from school constitutes a deprivation of his statutory entitlement to an education, thereby triggering the fair treatment requirements of the Fourteenth Amendment's Due Process Clause. See *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

³ See, e.g., *Ingraham v. Wright*, 430 U.S. 651, 677-79 (1977). In *Ingraham*, the Supreme Court held that students' due process rights protecting them from the infliction of corporal punishment were adequately protected by the availability of tort suits against teachers in state courts. *Id.*

present an alternative approach to school discipline based on due process principles.

I. CONSEQUENCES OF THE CONVENTIONAL APPROACH TO SCHOOL DISCIPLINE

Our interest in investigating effective alternatives to suspension and expulsion in school discipline grows out of one author's experience in dealing with student discipline issues as a member of her local school board. With respect to expulsions, for the major portion of her tenure, the board took responsibility for the entire expulsion decision-making process, including conducting the expulsion hearing. Expulsion cases generally involved significant behavioral problems of middle and high school students, such as coming to school with weapons, assaulting others, engaging in serious fights, damaging school property, or repeatedly and significantly disrupting class.

She consistently felt that the board, and the administrators advising them, were in over their heads. In the boardroom they talked about the need to make the schools safe for students and teachers and to send a message that the behavior in question would not be tolerated. In other words, if they let one kid off easy, they feared other students would repeat the behavior. They felt that it was necessary to teach the offender a lesson, to show that there are consequences for bad behavior, and even to provide retribution to satisfy the outrage of teachers or students (and their parents) who were victims of the behavior. There was a lot of concern about how the board's decision regarding expulsion would look to the school and to the larger community. It was important to appear tough and in control of the schools. When the offense was serious, there was little patience with a board member who wondered about a student's underlying motivations for acting out or suggested strategies short of expulsion intended to help the student and improve the bad behavior.

During deliberations, respected theories of adolescent development or proven practices of effective punishment were never discussed. She was reminded of exasperated parents, throwing up their hands at their child's misbehavior and imposing harsh consequences because they do not know what else to do and because trying to understand the causes of the misbehavior is difficult, complicated, and painful. She had a darker thought as well—that people are punitive in their hearts. There was a general lack of sympathy or understanding for the offending students and outright fear and condemnation of those whose behavior had been extreme. With the "hardcore" students, there was a belief that they were beyond hope, even though they were only in their early- or mid-teens.

While clearly the board had a responsibility to provide safe schools, it appeared that the board was avoiding the underlying issues, and in fact making matters worse—not making the schools safer, but only acting symbolically to reassure the community that they were in charge. In cases in which they expelled, they rid the school of problem students, including some who had been violent. But now these students were out in the community, unsupervised and unsupported. Board members seldom learned what ultimately happened to these students, but it seemed clear that expelling students was good for neither them nor the community. The kids were in trouble and needed help that those in charge often did not recognize or know how to give.

Virtually every file showed poor attendance, bad grades, and recurring discipline problems. The fact that the overwhelming majority came from minority backgrounds made these facts even more disturbing. Intervention should have come much earlier in their academic careers. To make matters even worse, these students had invariably been suspended for a lengthy period pending the expulsion hearing and become even further behind academically than they already were. Reviewing their files and observing their unhappy, often sullen faces when they appeared at their expulsion hearings made it clear that this whole process would undoubtedly exacerbate their anger, discouragement, and despair, and reinforce their resentment toward adults and the school.

The board did not always vote to expel. It sometimes acted with attention to the student's welfare, considering the limited range of options and supports available—transfer to a different school in the district, suspended expulsion with a “contract” requiring good behavior, use of school-based tutoring services and encouragement of counseling, or referral to the county-run alternative school. However, these options were often not adequate to address the truly difficult problems these children were experiencing.

Suspensions from school were under the purview of school administrations. At the middle and high school levels, use of suspensions was commonplace, with students removed from school for a variety of infractions or placed in an in-house environment where little productive activity took place. At the high school level, staff involved with discipline exhibited a strong law enforcement mentality, sometimes generated out of a genuine conviction that they were in a desperate struggle to maintain control. Many felt that cracking down harshly by issuing suspensions was the only serious response to significant (and often not-so-significant) misbehavior, and that any other approach was indistinguishable from taking no action at all. Students were often treated as if they were criminals; parents were dealt with disrespectfully and as adversaries. Again, most of the students were from minority and low-income backgrounds and had poor academic records.

In the elementary schools, out-of-school suspensions were less prevalent, but they still took place. Disruptive students were considered a significant problem, and their teachers often sent them out of the classroom to the principal's office or to an in-house suspension room. Middle-class parents, as well as many teachers, complained that these disruptive students, who were predominantly African American, made it very difficult for learning to take place in the classroom.

One high school teacher explained how many students got suspended: A student would commit a minor infraction in class or elsewhere in the school, to which a teacher or school security person would respond harshly. The student would then get upset; react with worse behavior, such as cursing and belligerence; and be in big trouble. The original precipitating event along with the adult's inappropriate and exacerbating behavior would be forgotten. The student would return after the suspension academically behind, aggrieved, and in the wrong frame of mind for getting back to work.⁴

A student described his downward spiral at the high school as follows: He was a ninth grader who had difficulty achieving academic success. He was repeatedly kicked out of class for "talking and playing around." "I never went to class with the intention of not doing my work," he told me. But when he ran into a problem with his work he would "start playing." If he had received more help and attention in the classroom this would not have happened, he told us. Later, he was suspended for minor infractions such as throwing water balloons, and once for "tagging a wall" (i.e., graffiti). Every time he got into trouble, the school's response was the same—send him to on-campus suspension, where sometimes teachers would send work, but other times the student would just sleep at his desk. He stopped going to class because he had been pegged as a troublemaker and was regularly hassled by school personnel, so "it was a burden to go to school." Eventually, he was forced out of the school and required to attend the alternative high school, where he pulled himself together and ultimately graduated. He has recently graduated from UC Berkeley via a transfer from community college.⁵ While this student's story ends in success, the school did not help him but instead made his life more difficult. Many students are not able to overcome having such obstacles imposed upon them.

The approach to school discipline of this school district is pretty typical. Use of harsh discipline is widespread throughout the United States.⁶ Society

⁴ Interview with Anne Johnston, Teacher, Berkeley High School, Berkeley Unified School District, in Berkeley, Cal. (Feb. 6, 2005).

⁵ Interview with Doug Cobb, in Berkeley, Cal. (Feb. 11, 2005).

⁶ Advancement Project & The Civil Rights Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies* 1 (2000),

has never been especially understanding or compassionate about unengaged, disruptive students. Treatment of children's emotional and behavioral difficulties is a very challenging endeavor, and prevention has received little attention.⁷ Rather, many school officials look for something decisive and simple that will quickly get the problem under control. They are less interested in understanding problematic kids than they are in getting them out.⁸ The blame is placed upon the student while underlying problems of school culture, student-teacher relations, and students' frustration when their academic needs are not met remain unidentified and unaddressed.⁹

The numbers of suspensions and expulsions have increased with escalated fear of school violence and development of zero tolerance policies that utilize suspension and expulsion for minor, as well as serious, infractions.¹⁰ According to the U.S. Department of Education's Office for Civil Rights (OCR), the annual suspension rate has almost doubled since the mid-1970s from 1.7 million students in 1974 to 3.2 million in 1998.¹¹ In the Chicago Public Schools, for example, the number of yearly expulsions went

http://www.civilrightsproject.harvard.edu/research/discipline/final_report.pdf (last visited Apr. 3, 2006).

⁷ ERIC P. HARTWIG & GARY M. RUESCH, *DISCIPLINE IN THE SCHOOL*, 46–47 (2d ed. 2001).

⁸ Russell J. Skiba & Reece L. Peterson, *School Discipline at a Crossroads: From Zero Tolerance to Early Response*, 66 *EXCEPTIONAL CHILDREN* 335, 337 (2000).

⁹ See Pedro A. Noguera, *Finding Safety Where We Least Expect It: The Role of Social Capital in Preventing School Violence*, in *ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS* 202, 206 (William Ayers et al. eds., 2001) [hereinafter *ZERO TOLERANCE I*]; ANN ARNETT FERGUSON, *BAD BOYS: PUBLIC SCHOOLS IN THE MAKING OF BLACK MASCULINITY* 97–99 (2001); Lawrence DeRidder, *The Impact of School Suspensions and Expulsions on Dropping Out*, 68 *EDUCATIONAL HORIZONS* 153, 154 (1990).

¹⁰ The genesis of zero tolerance in school discipline was the passage of the Gun-Free Schools Act of 1994, 20 U.S.C. §§ 8921–8923 (2000), *repealed by* No Child Left Behind Act of 2001, P.L. 107-110, Title X, § 1011(5)(c), 115 Stat. 1986, which mandated one-year expulsions for students who brought firearms to school and has been amended to include any instrument that may be used as a weapon. States and local school districts went beyond this law's requirements to extend zero tolerance policies to a wide range of behaviors. Also, the safe and drug-free provisions of the Federal No Child Left Behind Act, 20 U.S.C. §§ 7101–7184 (Supp. II 2002), require states to adopt zero tolerance policies toward violence as a prerequisite to receiving funding for after school and drug and violence prevention activities.

¹¹ DANIEL J. LOSEN & CHRISTOPHER EDLEY, JR., *The Role of Law in Policing Abusive Disciplinary Practices: Why School Discipline Is a Civil Rights Issue*, in *ZERO TOLERANCE I*, *supra* note 9, at 230, 231.

from 81 during the 1995–1996 school year to a projected 1000 for 1998–1999, even though the number of school offenses remained constant.¹²

The true number of students suspended and expelled is unknown because school districts and states do not adequately keep and report this data. It is difficult to obtain accurate statistics because data collection procedures and attendance accounting vary from state to state—there is no standard definition of school dropout and no follow-up. The actual numbers may be much greater than those reported.¹³ Better data is needed to understand the true scope of the problem.

Minority students, especially African American males, are disproportionately subjected to exclusionary disciplinary practices. In 1998–1999, 33% of all those suspended and 31% of those expelled were African American, while African Americans made up only 17% of all students. A 1997 report by the U.S. Department of Education, *The Condition of Education*, found that almost 25% of all African American male students were suspended at least once over a four-year period.¹⁴ Differences in socioeconomic status and misbehavior do not account for these discrepancies in suspension and expulsion. Rather, African American students appear to be referred to the office and punished more severely for less serious and more subjective offenses, such as loitering, disrespect, and excessive noise.¹⁵ Fewer studies have investigated disproportionality in discipline among students of other ethnicities. For Latino students, some studies show overrepresentation in discipline, but others do not. A recent study of discipline in the San Diego schools, for example, has shown disproportionate suspensions of Latino students.¹⁶

Little or no research has been conducted to directly measure the effect of suspension and expulsion upon student behavior or to find out what happens

¹² Rebecca Gordon, Libero Della Piana & Terry Keleher, *Zero Tolerance: A Basic Racial Report Card*, in ZERO TOLERANCE I, *supra* note 9, at 165, 170.

¹³ See SASHA POLAKOW-SURANSKY, STUDENT ADVOCACY CENTER OF MICHIGAN, ACCESS DENIED: MANDATORY EXPULSION REQUIREMENTS AND THE EROSION OF EDUCATIONAL OPPORTUNITY IN MICHIGAN 40 (1999); DeRidder, *supra* note 9, at 153.

¹⁴ LOSEN & EDLEY, *supra* note 11, at 231.

¹⁵ RUSSELL J. SKIBA, ROBERT MICHAEL, ABRA CARROLL NARDO & REECE PETERSON, INDIANA EDUCATION POLICY CENTER, THE COLOR OF DISCIPLINE 22 (2000).

¹⁶ Among students in grades six through twelve, 45% of those suspended were Latino, although they represented only 37% of the student population. APPLIED RESEARCH CENTER, PROFILED AND PUNISHED: HOW SAN DIEGO SCHOOLS UNDERMINE LATINO AND AFRICAN AMERICAN STUDENT ACHIEVEMENT 4 (2002).

to expelled students.¹⁷ However, a growing body of data suggests that these severe disciplinary practices are not effective and are harmful to the student as well as to society.

There is no convincing evidence that zero tolerance policies make schools safer.¹⁸ A study of school violence conducted by the National Center for Education Statistics (NCES) found that after four years of implementing zero tolerance policies, schools employing zero tolerance reported greater levels of discipline problems than schools without zero tolerance.¹⁹ Furthermore, most suspensions and expulsions are for offenses that are not very serious and do not pose a threat to school safety.²⁰

Available evidence indicates that suspensions and expulsions exacerbate problem behavior and make schools and society less safe. Rates of repeat suspensions are high, ranging from 35–45%.²¹ Suspension has been shown to be a predictor of future suspension. In a longitudinal study of a group of students from second through twelfth grade, the number of suspensions in the fourth and fifth grades was a predictor of suspensions in the sixth grade. The number of suspensions in the sixth grade was positively related to the number of suspensions in the seventh and eighth grades.²² These findings call into question the effectiveness of out-of-school suspensions as a deterrent and even suggest that this type of punishment can act as a

¹⁷ Russell J. Skiba & Kimberly Knesting, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, in ZERO TOLERANCE: CAN SUSPENSION AND EXPULSION KEEP SCHOOLS SAFE? 17, 32 (Russell J. Skiba & Gil G. Noam eds., 2001) [hereinafter ZERO TOLERANCE II]; Gale Morrison, Suzanne Anthony, Meri Storino, Joana Cheng, Michael Furlong & Richard Morrison, *School Expulsion as a Process and an Event: Before and After Effects on Children at Risk for School Discipline*, in ZERO TOLERANCE II, *supra*, at 45, 56.

¹⁸ Skiba & Knesting, *supra* note 17, at 35.

¹⁹ Russ Skiba & Reece Peterson, *The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?*, 80 PHI DELTA KAPPAN 372, 376 (1999) (citing NATIONAL CENTER FOR EDUCATION STATISTICS, PUBL'N NO. 98-030, VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996-97 (1998)).

²⁰ M. Karega Rausch & Russell Skiba, *Unplanned Outcomes: Suspensions and Expulsions in Indiana*, 2 EDUC. POL'Y BRIEFS 2 (2004), available at <http://ceep.indiana.edu/ChildrenLeftBehind/pdf/Unplanned.pdf>; SKIBA ET AL., *supra* note 15, at 56–57; Gail M. Morrison & Barbara D'Incau, *The Web of Zero Tolerance: Characteristics of Students Who Are Recommended for Expulsion from School*, 20 EDUC. AND TREATMENT OF CHILDREN 316, 319 (1997).

²¹ SKIBA, ET AL., *supra* note 15, at 32.

²² Linda M. Raffaele Mendez, *Predictors of Suspensions and Negative School Outcomes: A Longitudinal Investigation*, in DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE 17, 23–25 (Johanna Wald & Daniel Losen eds., 2003).

reinforcer.²³ In fact, behavioral research has consistently shown that punishment alone cannot teach new behavior and can produce serious side effects, such as counter-aggression and escalation of misbehavior.²⁴

While almost no information has been collected regarding students' emotional responses to suspension or expulsion, interviews that have been conducted with expelled students have revealed increased apathy, lowered self-esteem, loneliness, boredom, feeling marginalized and unwanted, distrust of school officials, and family turmoil.²⁵

Suspension and expulsion have also been linked to dropping out of school. In a study comparing high school dropouts with students who stayed in school, disciplinary problems, including suspension as well as poor performance, were associated with dropping out.²⁶ Actually, being suspended has been found to be one of the top three school-related reasons for dropping out.²⁷ This is not surprising: students who have been suspended or expelled become further behind in their schoolwork, lose academic credits, and are more likely to become alienated or discouraged, thus accelerating their path toward dropping out. Special education students are at a higher risk and are even more likely to drop out after suspension or expulsion.²⁸

Many students never return to school after being suspended or expelled. A Michigan Department of Education study for 1995–1996 showed that only 8.7% of expelled students attended alternative schools.²⁹ Furthermore, interviews with students revealed that school officials are sometimes uncooperative, dragging their feet and creating obstacles, when responding to reinstatement requests after completion of the expulsion period. Data for the few Michigan school districts that kept such information showed that only 40–64% of students petitioned for reinstatement, and 46–60% of these students were never reinstated.³⁰ These statistics are especially shocking

²³ SKIBA ET AL., *supra* note 15, at 33; Morrison et al., *supra* note 17, at 57.

²⁴ SKIBA ET AL., *supra* note 15, at 33–34.

²⁵ POLAKOW-SURANSKY, *supra* note 13, at 5; see CARL PARSONS, FRANCES CASTLE, KEITH HOWLETT & JOHN WORRELL, COMMISSION FOR RACIAL EQUALITY, EXCLUSION FROM SCHOOL: THE PUBLIC COST. REVISED 33–35 (1997).

²⁶ Ruth Ekstrom, Margaret Goertz, Judith Pollack & Donald Rock, *Who Drops Out of High School and Why?*, 87 TCHRS. C. REC. 356, 360 (1986).

²⁷ DeRidder, *supra* note 9, at 154 (citing Russell Rumberger, *Why Kids Drop Out of School*, Program Report 81-B 4 (Stanford, CA: Institute for Research on Educational Finance and Governance, 1981)).

²⁸ Morrison et al., *supra* note 17, at 58.

²⁹ POLAKOW-SURANSKY, *supra* note 13, at 15. Michigan law did not require alternative placements for expelled students at this time.

³⁰ *Id.* at 14.

because most expelled students were very young—only twelve to fifteen years old.³¹ Suspension is also sometimes used as a push-out—an excuse to encourage troublemaking students to leave.³²

Many suspended and expelled youths become involved in the juvenile justice system. Time out of school and school alienation are associated with increased risk of juvenile delinquency and incarceration.³³ Not in school, these youths have little opportunity to become engaged in productive activities and have a lot of free time to get involved in drugs, violence, and disruption in the community, especially given that the only other young people available for friendship are likely to be those in similar circumstances.³⁴

Schools actually actively help shape negative futures for some students, predominantly for African American boys, through what some have argued is a “hidden curriculum,”³⁵ labeling them as unsalvageable and future criminals, and punishing them. Even young children in elementary school are viewed as on a prison track with their adult fates sealed. In reaction to such classification, these boys must disidentify with school to preserve their self respect.³⁶

Additional costs to the individual and society are revealed by the following numbers: 50% of high school dropouts are not employed, and as much as 80% of the prison population is composed of high school dropouts.³⁷

The goal of any disciplinary strategy should be to reduce unwanted behavior and replace it with behavior conducive to learning. It is important to try to understand the reasons that students are misbehaving and provide them with the support necessary for positive change.³⁸ Sometimes what is misbehavior to the administrator makes perfectly good sense to the student.

³¹ *Id.* at 12.

³² Skiba & Peterson, *supra* note 19, at 376.

³³ J. David Hawkins, T. Herrenkohl, D.P. Farrington, D. Brewer, R.F. Catalano & T.W. Harachi, *A Review of Predictors of Youth Violence*, in *SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS* 106, 138–39 (Rolf Loeber & David P. Farrington eds., 1998); Gerald R. Patterson, *Developmental Changes in Antisocial Behavior*, in *AGGRESSION AND VIOLENCE THROUGHOUT THE LIFE SPAN* (Ray DeV. Peters, Robert J. McMahon & Vernon L. Quincey eds., 1992).

³⁴ Morrison et al., *supra* note 17, at 57.

³⁵ FERGUSON, *supra* note 9, at 68.

³⁶ *Id.* at 97–98.

³⁷ Sybil Fix, *Dropouts Tied to Suspensions*, THE POST AND COURIER, Apr. 30, 2000, at A12.

³⁸ HARTWIG & RUESCH, *supra* note 7, at 16–17.

To be effective, discipline must be a learning experience aimed at improving behavior while keeping students in school, letting them know that we care about them, we want them in school, and we are going to help and support them. Our present system does the opposite, imposing negative and exclusionary discipline strategies. We seem to be stuck here, as individuals and at a societal level, perhaps brainwashed by our upbringing (as our parents and elders were, and theirs) into believing that discipline must be harsh to be effective, that it is what transgressors deserve, and that any other way of tackling the problem is “soft” and inadequate. An effective disciplinary policy needs consequences, but it also must show respect for students and their families and a commitment to their educational success.

II. DIGNITY-BASED APPROACHES TO SCHOOL DISCIPLINE

It is time for a new approach to school discipline. We wish to present such an approach. It starts with the realization that due process principles are not the enemy of effective school policies, but an important resource to be used in designing those policies. Most school administrators view the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution as at best irrelevant, and at worst counterproductive, to their mission as educators. It is irrelevant because the rudimentary protections afforded students under the Supreme Court’s decisions seldom have any impact on district disciplinary policy and counterproductive because judicially imposed hearings are seen as eating up scarce administrative resources.

We would like to propose another way to view the Due Process Clause. We believe that the Supreme Court has been torn by two worthy goals when interpreting due process in the school environment. On the one hand, the Court wants to articulate principles of fair treatment;³⁹ on the other hand, it wishes to show deference to school administrators’ expertise in the area of education.⁴⁰ Usually the result is an opinion that mentions due process ideals while reaching a holding that supports school district autonomy.⁴¹ But it does

³⁹ *Ingraham v. Wright*, 430 U.S. 651, 674–82 (1977) (discussing at length students’ interests in due process in the context of corporal punishment).

⁴⁰ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 340–41 (1985)).

⁴¹ *Ingraham*, 430 U.S. at 682 (“Imposing additional administrative safeguards as a constitutional requirement might reduce [the risk of a violation of a student’s rights] marginally, but would also entail a significant intrusion into an area of primary educational responsibility.”); *New Jersey v. T.L.O.* 469 U.S. 325, 342–43 (1985) (creating a standard of “reason and common sense” instead of strict probable cause to govern searches by teachers and administrators, trusting it would “neither unduly burden the

not have to be this way. We can avoid the dilemma that the Court has faced by urging school districts to adopt due process principles voluntarily in a way that integrates these principles with the teaching function. Due process principles need not be a hammer wielded by outsiders to coerce school districts, but a public philosophy that schools can voluntarily adopt to improve their educational performance.

While it is important that due process principles permeate the disciplinary environment at schools, no amount of due process in any form will be sufficient to achieve the school's educational mission. The disciplinary system must work to support the educational mission of the school. Student misconduct that calls for a disciplinary response should also be seen as an opportunity to intervene to confront the learning problem that often prompts the misconduct.

We call our approach "internal due process plus." We choose "internal" to emphasize that the school district freely chooses to implement due process principles throughout the school environment rather than tacking on extra hearings once student misconduct has occurred. We choose "plus" to emphasize that due process is never enough; it can only complement a school environment in which each child deserves a first class education. Discipline must be accompanied by attention to the underlying reason for the behavioral problem and recognition that often the real problem is academic in nature. The "due process" in "internal due process plus" is comprised of principles of fairness distilled from Supreme Court opinions that we believe provide intelligent guidelines for school governance.

The philosophy of due process is based on a single premise that has special significance in the educational setting—every person possesses dignity that requires the government to treat them with respect. First, it teaches students a fundamental principle of democracy: the dignity of the individual. Second, it demands that schools treat students fairly. We break down the concept of fairness into five principles that we believe should inform disciplinary policy in our schools: notice, equality, participation, proportionality, and rationality.⁴²

The first principle is notice. Rules should give students "sufficiently definite warning as to the prescribed conduct when measured by common

efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of school children).

⁴² The approach outlined here is heavily influenced by Professor Jerry Mashaw's "dignitary model" of due process. JERRY MASHAW, *DUE PROCESS IN THE ADMINISTRATIVE STATE* 158–221 (1985).

understanding and practices.”⁴³ In other words, students should be made aware of what they can and cannot do. Many students are disciplined for violating vague rules like “defying authority.” Such a vague direction does not inform the student of what conduct is not allowed; it only gives administrators license to punish any act they consider “defiant.”

The second principle is equality. Due process also prohibits “arbitrary and erratic” enforcement of rules of conduct.⁴⁴ A system in which some students are punished for behavior that is condoned when committed by other students fails this basic test of equality. The perception that minority students are punished for behavior that is condoned when engaged in by other students destroys the legitimacy of the disciplinary system. Students are very sensitive to perceived inequality of treatment and may interpret it as rejection by the institution. It should be pointed out that vague standards, like “defying authority,” facilitate unequal enforcement.

The system should also encourage student participation. In *Goss v. Lopez*, the Supreme Court said that before students are suspended for a significant period of time, they should be given “an opportunity to present [their] side of the story.”⁴⁵ Here, the Court endorsed one application of the larger principle of participation. Students should play an active role in the disciplinary process. When one allows students to tell their side of the story, it not only gives the administration access to information important for reaching a correct decision, but it also demonstrates respect for the students. We believe that the Court’s endorsement of participation in *Goss* can be given a broader application so that students feel they participate at all stages of the disciplinary system, from determining what behavior is forbidden to determining fair punishments for infractions. This way students can come to have an investment in the rules that they are required to obey rather than viewing themselves as objects of bureaucratic whim.

Proportionality is also necessary. Due Process also condemns “grossly excessive” punishments.⁴⁶ When one considers the consequences to the student, expulsions in all but the most extreme situations are excessive. There

⁴³ *Jordan v. De George*, 341 U.S. 223, 231–32 (1951) (citing *Connally v. Gen. Constr. Co.*, 269 U.S. 385 (1926)) (explaining the standard of notice with respect to deportation hearings).

⁴⁴ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (striking down as vague a vagrancy ordinance which the Court felt encouraged “arbitrary and erratic arrests and convictions”).

⁴⁵ *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

⁴⁶ *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) (reversing a grossly excessive award of punitive damages against an insurance company as violative of due process).

must be consequences for breaking the rules, but those consequences must be proportionate to the harm done and must support, rather than undermine, the educational function. Too often, relatively minor misbehavior mushrooms into disciplinary charges that result in the student leaving school. The Supreme Court's concept of proportionality would guard against a disciplinary response that is too harsh, but we think that it can be extended to aim toward the disciplinary response that is also educationally appropriate. It does the students no service to ignore anti-social behavior, but suspending them from classes is seldom the proper response. For instance, suspending students who get in fights from classes will only increase their feelings of isolation; instruction in understanding hostile feelings and how to deal with them makes more educational and disciplinary sense.

The bedrock principle of due process is rationality: All government action must be a rational attempt to accomplish some appropriate public goal. The Supreme Court, however, has been extremely reluctant to enforce this rationality requirement against governmental bodies,⁴⁷ but that does not mean it should not be a principle that school districts apply in creating a disciplinary code. Suppose that a school district has a rule against using cell phones on campus. A hall monitor "busts" a female student for talking to her mother on a cell phone between classes. The student reacts rudely; now the offense is "defying authority" and a process has begun that might end in suspension or expulsion. Might not the school district want to consider the rationality of the across-the-board "no cell phone" rule? How does talking on a cell phone between classes disrupt the educational process more than talking to a friend standing next to you? Cell phones are a well-established part of the youth culture—a sign of maturity and independence. Unnecessary rules may not only trigger unnecessary disciplinary charges; they also reduce student respect for the school disciplinary code as a whole. Student participation in creating the disciplinary code might remove such irrational rules.

What would a school with an "internal due process plus" disciplinary system look like? We resist the temptation to provide a "one size fits all" solution for the simple reason that the disciplinary problems and the resources to confront them differ from district to district. However, we do believe that there is an abundance of approaches and techniques from which a school district can choose. We present them as calling for interventions throughout the entire school as well as in the classroom; discuss alternatives to out-of-school suspension and expulsion; and suggest additional resources

⁴⁷ *Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487–88 (1955) (holding that a law that restricted opticians from fitting or duplicating lenses without a prescription was rational and that such matters should be addressed by the legislature).

for school personnel to utilize depending on the student's individual circumstances. While the principles are the same for elementary, middle, and high school, the appropriate policies will differ according to the age of children.

We realize that an effective disciplinary system goes hand-in-hand with, and is only one essential component of, an effective learning environment that must include well-trained teachers, good curriculum, up-to-date materials, adequate facilities, and a commitment to academic success for all students. The fact is, where students are academically engaged and their educational needs are being met, few discipline problems arise.

A. School-Wide Strategies Targeting All Students

A fair disciplinary system supports the educational environment necessary for successful learning. Students feel more secure in an environment in which the "rule of law" reigns than they do in schools that rely primarily on security devices like metal detectors and cameras.⁴⁸ This type of system begins with reasonable and clear rules. Everyone needs to understand what is expected of them. Vague rules like prohibitions against "defying authority" lack this element of notice and provide school staff with too much leeway in deciding whether a student has committed an offense, raising the possibility of arbitrary enforcement. Disciplinary rules must be evenly and consistently enforced. Attention to notice and equality of enforcement will help create a sense of fairness and order as well as a perception of safety on the part of students.⁴⁹

Students should be allowed to participate in creating the rules they are asked to obey. This furthers the values of notice as well as participation. The more the students feel that they are in some sense authors of the system, the more respect they will give it. We also know from personal experience that discussing issues that have moral dimensions (as disciplinary codes do) creates opportunities for animated discussions that draw on students' sense of justice to make an exciting educational experience. As students mature, their ability to participate in the disciplinary process increases. Younger students could participate through classroom discussions about school rules, reasons for the rules, and their feelings about whether the rules are fair. Older students should play a role in developing or approving the school's disciplinary code. For example, if high school students were permitted to give input in designing a school rule on the use of cell phones, a practical,

⁴⁸ Joseph C. Gagnon & Peter E. Leone, *Alternative Strategies for School Violence Prevention*, in ZERO TOLERANCE II, *supra* note 17, at 116–17.

⁴⁹ *Id.*

realistic, and enforceable rule would likely emerge, such as, it is acceptable to use them in the hallways between classes, but they must be turned off during class. Students could help administer a disciplinary code that they helped develop through a student-run youth court.

Schools should act preventively by providing school-wide programs, which target all students, that are aimed at improving the school climate through teaching students positive social interactions and a sense of respect. This overall school environment will, in turn, provide a context for positive interactions, both between students and adults and among students. Programs like conflict resolution and peer mediation have proved effective in reducing school violence, which has been linked to inadequate social and problem-solving skills. We spoke to a teacher who has taught conflict resolution for the past several years in an urban high school in a neighboring community. She helps her students understand that conflict is just a surface manifestation of deeper problems and teaches them the skills needed in addressing conflicts. Her sophisticated curriculum includes "a big piece around self-awareness and the filter through which we perceive the world," and encompasses the idea of "holding two truths at one time" rather than believing only one person can be "right." She gave this anecdotal evidence about the program's success: in one year the program mediated seventy-five conflicts and only one reignited; mediation referrals have expanded, including self-referrals from students with conflicts; students are willing to participate in mediation when invited to do so, rather than saying "it's stupid." This teacher confirmed that successful conflict resolution programs require staff commitment, substantial planning, ongoing training of staff and students, and monitoring of progress.⁵⁰ The principle of participation is at work here, engaging students in taking action to prevent conflict before it becomes full-blown.

B. Classroom Strategies

The key to effective discipline is a well-trained teacher who treats students with respect and demonstrates dedication to helping them fulfill their educational potential. Learning is the goal; maintaining the proper disciplinary environment is just one of the tools. Classrooms that are characterized by caring relationships and a sense of community, and in which

⁵⁰ Interview with Urana Jackson, Coordinator, Conflict Management Program, Oakland Tech High School, in Berkeley, Cal. (Feb. 9, 2005); *see also* Gagnon & Leone, *supra* note 48, at 104–10.

students academic needs are being met, tend to have less disciplinary problems.⁵¹

The most basic and effective behavioral interventions take place in the classroom and are part of the instructional program. Behavior is learned through instruction, just as academic subjects are learned. It is an important part of a teacher's job to teach social as well as academic behavior—the two are inextricably intertwined.⁵² Classroom teachers can accomplish this by structuring the instructional environment in a way that maximizes students' chances for success, through consistent feedback and encouragement, and by reinforcing proper behavior. Even students with significant behavior problems also show positive behavior, which the teacher should look for and acknowledge.⁵³ As a teacher of kindergartners and first-graders put it: "You have to catch them being good. Sometimes this takes a real eagle-eye!"⁵⁴ Teachers should not just wait for students to fail and then punish them—an ineffective as well as time-consuming approach. The positive approach is most effective as a school-wide effort in which the staff work as a team to develop a set of expected classroom behaviors, methods of teaching and encouraging these behaviors, discouraging problem behavior, and monitoring their progress. Teachers and administrators need to be trained in this approach, as it does not come naturally to many.⁵⁵

It is important to begin addressing behavioral problems at the elementary school level. Consistent minor infractions may signal underlying academic or social problems with which the student needs help. Minor behavioral problems in early grades may well develop into serious misbehavior later on. Most students who are expelled have had long disciplinary histories beginning with small infractions. In one study, teachers' assessments of students with problem behavior in grades three to five predicted suspensions

⁵¹ JEANNIE OAKES & MARTIN LIPTON, *TEACHING TO CHANGE THE WORLD* 262–306 (1999).

⁵² See generally Terrance M. Scott, *Removing Roadblocks to Effective Behavior Intervention in Inclusive Settings: Responding to Typical Objections by School Personnel*, *BEYOND BEHAVIOR*, Fall 2002, at 21–26.

⁵³ *Id.*

⁵⁴ Interview with Deborah Chin, Teacher, Belshaw Elementary School, Antioch Unified School District, in Martinez, Cal. (Feb. 6, 2005).

⁵⁵ Terrance Scott & Judi Hunter, *Initiating Schoolwide Support Systems: An Administrator's Guide to the Process*, *BEYOND BEHAVIOR* 13–15 (Fall 2001); Timothy Lewis, *Building Infrastructure to Enhance Schoolwide Systems of Positive Behavioral Support*, *BEYOND BEHAVIOR* 10 (Fall 2001); George Sugai and Robert Horner, *Features of an Effective Behavior Support at the School District Level*, *BEYOND BEHAVIOR* 16 (Fall 2001).

from school in the sixth grade.⁵⁶ It follows that addressing problem behavior in the early grades when it first occurs could avoid more serious misbehavior and suspensions later. Just as a good teacher can help a student create a positive self-image, a teacher's perception of a student as a troublemaker can create a negative self-image that leads to escalating misbehavior through a self-fulfilling prophecy.⁵⁷ However, it is not too late to reach older students who misbehave. Though they might appear uninterested and unapproachable, most are eager to connect with a caring adult and respond quickly when given the opportunity.

When students misbehave in class, teachers should see it as their responsibility to resolve the issue in the classroom. For some children, a teacher's mild, corrective comment is enough. But for others more is needed. One teacher of young students listed her strategies for us, illustrating her flexible approach: "Sometimes I ignore a misbehaving student and say 'I'm ignoring you but hope you'll join in [the class activity] soon.' This works for a lot of kids and takes little time." "Others need a firm voice," she continued. With some students she must ask, "What do you need right now?" and listen to the child's response, which might be, "I need colored pencils rather than crayons." She then has to convince the rest of the class that this is fair. "Fair is not the same," she tells them. "What one student needs, others might not."⁵⁸ For older students, we were given good advice about how to keep students in class by a young adult who had been regularly kicked out of class when he was in high school. Now he tutors in high school classrooms in Oakland, California. He told us that teachers should spend more time just checking in with the student, asking if everything is okay, and getting to know them. "If a student is disruptive, just go stand next to the student and put your hand on his or her shoulder. Pose a question to them to bring them into the discussion. Never challenge a student in front of the class. Never isolate a student," he said. "It's very rare that students are completely difficult and must be removed from class."⁵⁹

The teacher should be willing to talk and problem-solve with a misbehaving student: finding an appropriate time to discuss why the student's behavior was problematic, listening to the student's point of view, and attempting to arrive at a resolution that both parties accept as fair and reasonable. Most students value the opportunity to talk, as long as the adult

⁵⁶ Mendez, *supra* note 22, at 17–33.

⁵⁷ SUSAN SANDLER, TURNING TO EACH OTHER, NOT ON EACH OTHER: HOW SCHOOL COMMUNITIES PREVENT RACIAL BIAS IN SCHOOL DISCIPLINE 12–13 (2000) http://www.arc.org/gripp/conference/papers/justice_matters.pdf.

⁵⁸ Interview with Deborah Chin, *supra* note 54.

⁵⁹ Interview with Doug Cobb, *supra* note 5.

involved is willing to listen and not just lecture. Under this approach, which is suitable for all ages, students are viewed as participants, able to talk about problems with adults to seek understanding of what happened, why, and what to do about it.⁶⁰ Teachers can often nip minor disruptions in the bud, by asking students to explain what is going on and reflecting back what they said so the student knows the teacher has listened, all the while remaining neutral. This can be all it takes to de-escalate a situation. According to an educator who trains teachers in resolving classroom conflicts, “[s]uch a big piece of classroom management is having the insight to look behind the behavior. This can disarm the student. I’ve seen this happen over and over and it’s amazing!”⁶¹ Sometimes it might be preferable to find time to talk to the student privately, such as after class.

We recognize that establishing and maintaining student engagement in academics and good classroom behavior is no mean feat. A first-year eighth-grade math teacher talked with us about his ongoing struggle to develop effective strategies for teaching curriculum and classroom discipline. He recognized the relationship between them, describing his initial success in using a new approach to teaching math: “There were no classroom management problems because the kids were engaged and working.” But then they didn’t do well on a test he gave them “so they asked if they could go back to the old boring method [of being taught].” Just as he is experimenting with strategies for academic instruction, he is trying out different ways of tackling classroom management. He recounted his difficulties controlling student behavior during his last-period class. “Students were noisy, they shouted out, they were disrespectful of each other, and they didn’t do their work.” One day, in the midst of the chaos, he wrote on the board: “What do you like about this class? What don’t you like about this class? What could you do to make this a better learning environment?” This got their complete attention. “I listed all their ideas. They were a teacher’s dream. Their behavior was the best of any class ever.” From the students’ suggestions he developed a list of expected classroom behaviors to which the students agreed in writing. The list was sent home to parents. This is a great example of the principle of participation, engaging the students in making their own rules. However, the behavior problem was not solved forever. “It worked for awhile,” he said, “but it has sort of fizzled.”⁶²

⁶⁰ See, e.g., SANDLER, *supra* note 57 at 14, 17 (describing discipline policies of Central Park East Secondary School and El Puente Academy for Peace and Justice, respectively).

⁶¹ Interview with Urana Jackson, *supra* note 50.

⁶² Interview with Andrew Waranoff, Teacher, Westlake Middle School, Oakland Unified School District, in Berkeley, Cal. (April 7, 2005).

The point to realize is that good teaching does not involve any quick fixes. This teacher is working hard at creative approaches for both academics and behavior. He has gotten encouraging responses from his students: their interest and cooperation. He has also had some disappointments. Even great ideas do not work with ease, but involve ongoing effort, monitoring, and adjustment.

The importance of keeping a student in class cannot be overemphasized. With younger students, the point at which students become so disruptive that they must be removed from class is a critical moment in their school career. If dealt with appropriately, this could be the only time it happens. If not, the problem could become chronic and almost impossible to solve.⁶³ With older students, a teacher's strategic intervention with a volatile student can diffuse tension, restore order and academic focus, and avoid an escalation that could lead to a more serious incident and ultimately result in a suspension. As one teacher pointed out, however, such one-on-one interventions are possible only when the teacher really knows the student, "... but thirty-five students in a class makes this difficult."⁶⁴ Small classes and small schools permit a more personal environment in which teachers can know every student well.

In the rare situations in which students have to be removed from class, they should be provided with the next opportunity to talk—this time with a trained staff person or administrator, perhaps a school ombudsperson. This should be the primary disciplinary approach. This is not, as sometimes believed, a "soft" approach, but the toughest one of all, if it requires the student to take responsibility rather than letting the teacher do it all. Besides providing participation, it also treats the students with respect as people who can take responsibility for their own conduct.⁶⁵ Minor misbehavior that takes place outside of the classroom should be handled in the same way by school administrators.

People have to learn how to be good teachers. This requires including adequate attention to the teacher's disciplinary role in teacher training programs, as well as in on-the-job professional development. Teachers have reported that they are given little instruction as to how to deal with behavior problems and, therefore, tend not to view this as part of their job.⁶⁶ While a few teachers appear to have a natural ability to utilize the classroom management strategies described above—keeping perfect order and never raising their voices—it probably took them years to be able to do this. The

⁶³ See WILLIAM GLASSER, *THE QUALITY SCHOOL* 143 (1990); FERGUSON, *supra* note 9, at 230.

⁶⁴ Interview with Anne Johnston, *supra* note 4.

⁶⁵ GLASSER, *supra* note 63, at 144.

⁶⁶ Scott, *supra* note 52, at 22.

reality is, teachers need a lot of training and ongoing support. The young eighth grade math teacher of whom we just spoke was eager to have a mentor to talk with him and observe him in his classroom and was frustrated with the limited help available from experienced teachers. It is critical that teacher and administrator credentialing programs, as well as professional development for current school personnel, provide a more in-depth curriculum to broaden attitudes about the interconnection between academic and social behavior and teachers' responsibilities for teaching both, and to improve knowledge and skills regarding effective classroom management techniques.

Even here in the classroom—perhaps especially here—due process principles are relevant. A good relationship between a student and a teacher is based on respect and dedication to the student's academic success. It requires that the student knows what is expected and that expectations are reasonable. Equality does not require that all students are treated exactly the same in class; different students have different needs that require different treatment. Equal respect is the essence of the due process requirement, as the "crayon" anecdote we related earlier demonstrates. Even the intelligent teaching practice of "listening" to the student, as well as creating a sense of community in the classroom, fulfills the constitutional value of participation. Talking through an issue is a proportional response to misbehavior.

C. Alternatives to Out-of-School Suspension and Expulsion

If a student is guilty of a serious infraction, such as injuring or seriously threatening someone, damaging property, bringing a weapon to school, using or selling drugs, or even a repeated disruption, which cannot be fully addressed by talking or by using the supportive strategies described above, more traditional forms of due process become relevant. The student must be found to have violated a rule that gave him adequate notice of what was prohibited. The determination of a violation must be made by a neutral fact-finder after a procedure that allows the student the opportunity to tell his side of the story. Even when a student is properly found to have committed one of these more serious offenses, a purely punitive response is improper. The school should continue to use sanctions that have the educational goal of helping the student learn and internalize why the behavior was wrong and harmful, as well as to instruct him in more appropriate ways to act under similar circumstances. Interventions should address the reasons underlying the student's misbehavior. Proportionality, rationality, and participation all argue for this type of approach. Consequences should be designed on a case-by-case basis, depending on the individual student and the circumstances of

the misconduct.⁶⁷ Equality requires equal concern for the success of each student, not a uniform, rote disciplinary response. This is a reasonable and effective disciplinary response. There should be no out-of-school suspensions, and expulsions should be rare. Even with teenagers who have caused serious trouble, teachers must not give up on them. They are still children, not fully formed (many of us know this from raising our own teenagers), with most of their lives ahead of them. There are opportunities to work with them to improve their behavior, prevent development of future and more severe problems, and help them maintain their optimism for their future and a productive life.

There is a broad array of possible consequences and interventions.⁶⁸ These include: (1) community service and restitution, where the student is expected to repair the harm done (e.g. returning something stolen, paying for damage to property, removing graffiti, or volunteering at the school or in a community organization); (2) behavior contracts under which the school, student, and parents agree to a problem-solving plan that sets forth the responsibilities of all involved to address the student's needs and avoid further violations, with regular monitoring of the student's progress; (3) mediation combined with mentoring, involving one or multiple mediation sessions, ideally combined with mentoring/advisement with an adult or older student; (4) anger management classes provided at the school or in the community, where students learn to understand what causes them to feel angry and act aggressively and learn techniques they can use to reduce their anger and control their aggression⁶⁹ (Some react negatively to the term "anger management" because it implies that there is something wrong with the person required to attend such classes, rather than with the environment

⁶⁷ See American Bar Association Resolution (Feb. 2001), <http://www.abanet.org/crimjust/juvjus/jjpolicies.html#zero> ("[I]n cases involving alleged student misbehavior, school officials should exercise sound discretion that is consistent with principles of due process and considers the individual student and the particular circumstances of misconduct")

⁶⁸ For the alternative strategies set forth below, see, for example, SANDLER, *supra* note 57; RUSSELL SKIBA, KIMBERLY BOONE, ANGELA FONTANINI, TONY WU, ALLISON STRUSSELL & REECE PETERSON, INDIANA EDUCATION POLICY CENTER, PREVENTING SCHOOL VIOLENCE: A PRACTICAL GUIDE TO COMPREHENSIVE PLANNING (2000), available at <http://www.indiana.edu/~safeschl/psv.pdf>; Gagnon & Leone, *supra* note 48; Ronnie Casella, *Zero Tolerance Policy in Schools: Rationale, Consequences, and Alternatives*, 105 TCHRS. C. REC. 872 (2003).

⁶⁹ See, e.g., J.D. Larson, *Anger and Aggression Management Techniques Through the Think First Curriculum*, 18 J. OFFENDER REHABILITATION 101 (1992); Barry Glick & Arnold P. Goldstein, *Aggression Replacement Training*, 65 J. COUNSELING AND DEV. 356 (1987).

in which the person finds himself or herself.⁷⁰ The orientation, as well as the name, of such classes should take this into account.); and (5) drug or alcohol counseling in cases where a student is caught selling or using drugs or alcohol on campus.

A school could provide a youth court as a voluntary and more positive alternative to suspension or expulsion for students who face disciplinary action. Students who voluntarily admit their misbehavior would be referred to the youth court and sentenced by their peers.⁷¹ School-based youth courts have successfully handled offenses including disruptive behavior, fighting and bullying, school theft, vandalism, graffiti, truancy, and possession of alcohol and marijuana.⁷² Sanctions encompass those described above as well as peer jury service, verbal or written apologies, and essays.⁷³ The underlying philosophy of youth courts is to hold youth accountable by helping them understand how their offenses have harmed other individuals and the community and by providing ways for them to repair the harm they have caused.⁷⁴ Students are given an opportunity to learn from their mistakes through positive peer pressure and early intervention.⁷⁵ Student participation in conducting the proceedings and in submitting themselves to the youth court is key to their taking responsibility for their behavior.⁷⁶ Restorative justice principles involving opportunities for dialogue between the offender and the victim, with the goal of rebuilding relationships, can be incorporated into a youth court setting.⁷⁷

Critical to the principle of participation is working productively with parents—treating them with respect rather than as the enemy. Schools should enlist their cooperation and assistance, because parents are responsible for, and can influence, their children. Thus, parents need to be provided with adequate explanations about the disciplinary process and kept informed about how their child is doing.

If a student has to be removed from the classroom for a short period of time, such as for a cooling-off period, a meaningful educational experience

⁷⁰ Discussion with staff members of Berkeley High School, in Berkeley, Cal. (May 3, 2005); see also FERGUSON, *supra* note 9, at 43.

⁷¹ MARGARET FISHER, A.B.A., YOUTH COURTS: YOUNG PEOPLE DELIVERING JUSTICE 7 (2002), available at <http://www.abanet.org/justice/pdf/youthcourtsroadmap.pdf>.

⁷² *Id.* at 9.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ FISHER, *supra* note 71, at 25.

must be provided. Elementary school students suspended from class could perform community service in another classroom or in the school office.⁷⁸ In more traditional on-campus suspension programs, it is essential that the supervisor is well-trained, that curriculum is provided, and that students are able to get their class assignments and keep up with their homework. Otherwise, such programs are not effective.

Transferring a student to another school in the district or to an alternative school should be considered a last resort. Quality alternative placements for students who have been suspended and expelled have the potential to be helpful to students who have been unable to succeed in traditional school settings, provided there is a small, personal environment with positive adult involvement, good curriculum, and appropriate support services. However, such placements carry the danger of isolating students in a situation in which they can associate exclusively with other troubled peers, receive a watered-down curriculum and be held to low expectations.⁷⁹

Additional interventions for teachers and other school staff to call upon, either as preventive supports, or as part of a package of disciplinary responses, include tutoring, mentoring, and collaborating with community and child-serving agencies to provide referrals for students and their families in areas such as health and mental health. Many students' behavioral problems have complex roots and cannot be addressed by one agency alone.⁸⁰ Such a case management approach would require a staff person who could receive referrals from teachers and staff, meet with students and their families, connect them with appropriate community services, and conduct follow-up.

III. MAKING IT HAPPEN

A. *Raising Public Awareness*

The most critical step in changing our approach to discipline is to change our attitudes about what appropriate discipline really involves. Treating students as citizens worthy of respect does not have a long history in American public education. Public awareness must be raised regarding the ineffectiveness of traditional punitive approaches—long relied upon, taken for granted, and deep in our culture. This means changing our own views—not just those of other people. First, there is a need for more research on what

⁷⁸ SANDLER, *supra* note 57, at 56.

⁷⁹ Casella, *supra* note 68, at 889; LOSEN & EDLEY, *supra* note 11, at 243.

⁸⁰ SKIBA ET AL., *supra* note 68, at 29–30.

happens to youths who have been suspended or expelled to find out how these punishments influence their future. While existing evidence shows that these policies are harmful, there has been little systematic study. Combined with what we already know, it would provide the basis for a public information campaign to educate those at all levels of the educational system—including people such as the author who served on a school board, administrators, teachers, parents, legislators, and the public—about the harmfulness of traditional approaches to discipline. This would be a worthy initiative for a foundation or broad-based organization devoted to improving student achievement to take on. Hopefully improved awareness would lead to greater openness to consider, devise, and implement alternative and sounder discipline policies.

B. Training

It is important to recognize that some students present very challenging behavior that is difficult to handle. Training for school personnel is essential. There is a need for broader pre-service teacher and administrator education in child development, classroom management, and theories of behavior change and discipline; better support and monitoring for new teachers and principals; and improved lifelong professional learning. With regard to new teacher induction, most U.S. states could take lessons from other countries, such as Switzerland, China, New Zealand, Japan, and France, which provide programs that are more comprehensive, rigorous, and seriously monitored than most U.S. programs.⁸¹ In those countries, new teachers get substantial support from veteran teachers. A culture of collaborative work, including observing and being observed by others, and participating in teacher study groups and networks, which has been found effective in teacher learning, is inculcated from the beginning. While some U.S. teacher preparation programs incorporate these elements, many new teachers in the U.S. experience isolation, receiving only limited mentoring from veteran teachers and little opportunity to share experiences with their peers.⁸² Typical professional development for all teachers involves one-shot deals with little or no follow-up.⁸³ Both new and experienced teachers, as well as school and district administrators, would benefit from intensive collaborative work with their peers in all areas, including classroom management and effective

⁸¹ Harry K. Wong, Ted Britton & Tom Ganser, *What the World Can Teach Us About New Teacher Induction*, 86 PHI DELTA KAPPAN 383 (2005).

⁸² *Id.* at 384.

⁸³ *See, e.g., id.* at 379.

discipline. School board members need training as well to inform their policy-making and discipline deliberations.

C. Resources

The primary remedy we espouse—treating students with respect—adds no costs to a school district's budget. Moreover, many of the strategies described here would not require additional time or money. For example, for teachers, improved classroom management would save classroom time for teaching academics. For school discipline staff, who, based on our observations, are intensely busy every minute of the day, use of alternative strategies might be more efficient, especially if more positive approaches resulted in fewer disciplinary problems.

Some of our suggestions would involve costs. Conflict resolution, bullying prevention, youth courts, collaboration with community agencies, to name a few, require additional staffing, training, and materials. While costly, these measures are cheap when compared to the societal cost of expelled students without marketable skills. Furthermore, these are important components of effective discipline—a critical part of what is needed for an adequate educational program. Money should be available to pay for them. Funding adequacy is a major issue in education right now. States have raised educational standards and are holding schools and students accountable. The federal No Child Left Behind Act is also enforcing these standards. Yet the resources needed to do the job have not been provided. Cost studies are being conducted around the country to determine the amount needed to provide essential educational programs and close the achievement gap. Lawsuits are being filed seeking adequate school funding to meet obligations under state constitutions.⁸⁴ The costs of good discipline should be included.

IV. CONCLUSION

It is much too early to say that affirmative action programs will be unnecessary at any specific time in the future. But we do know that a first-rate public school system is a crucial part of any future society that could afford to end affirmative action. It will take a lot of money, time, and energy to create such a system. We think that a disciplinary system that “front-loads” due process by treating students with respect is one not-too-costly reform that can bring us closer to that happy day.

⁸⁴ See, e.g., *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178 (Ill. 1996); *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997); *Brigham v. State*, 692 A.2d 384 (Vt. 1997).